

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3603 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

PARESHBHAI M PATEL

Versus

STATE OF GUJARAT

Appearance:

MR HJ NANAVATI for Petitioner
MR VM PANCHOLI for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 28/04/2000

ORAL JUDGEMENT

1. This petition by the Managing Trustee of Vagheshwari Education Trust, Mehmadabad is directed against the order of the respondent No.3 dated 22nd May, 1989 disapproving the appointment of the respondent No.4 made on the post of Principal of the School run by the

trust and the show cause notice given for cut in grant-in-aid to the extent of 5% for this illegality alleged to have been committed in making of the appointment on the post of Principal. It is admitted that the school is run by the trust. The trust is a registered trust. The cause title of the writ petition has not been correctly framed. This trust is aggrieved of the aforesaid order of the respondent No.3 as well as the show cause notice and not the Managing Trustee. Managing trustee can file the petitioner for the trust and not in his individual capacity as a Managing Trustee of the Trust. I am seeing every day that the members of the Bar are not framing the petitions and more so, their cause titles, strictly in accordance with the legal requirement. Be that as it may. Only on this technical ground, I do not consider it to be appropriate to decline the relief to the petitioner in this case.

2. Briefly stating the facts of the case are that after obtaining no objection certificate for making the appointment on the post of Principal of the school, the trust invited the applications for the post aforesaid from the open market. In response to the said advertisement, many applications were received and out of them nine candidates including the respondent No.4 were called for interview. The selection committee was constituted as per the provisions of section 35 of the Gujarat Secondary Education Act, 1972. In selection committee, following four members were placed:

(i) Representative of the : Managing Trustee.
Management.

(ii) Second Representative : Principal, Krishna
of Management Hindi, Vidyalaya,
Baroda.

(iii) Representative of the : Shri Dhirubhai
Guj. Sec. Edu. Board Patel.

(iv) Representative of the : Shri A.S. Patel.
D.E.O.
(Second Member of Board)

3. It is the case of the petitioner that prior to the date of the interview, he intimated to all the members of the selection committee to remain present. Interview was scheduled on 10-2-1989. The petitioner explains that so far as the representative of the Gujarat Secondary Education Board is concerned, the petitioner on 1-2-1989 addressed a letter to the local representative -

Shri Dhirubhai Patel inter-alia requesting him to remain present as a member of the Selection Committee for interviewing the candidates for the post of Principal of the school on the scheduled date. The letter of the petitioner aforesaid was responded in affirmative by Shri Dhirubhai Patel. However, Shri Dhirubhai Patel could not remain present in the interview for his personal reasons. The members who were present in the selection committee interviewed the candidates and as per merits, recommended the name of respondent No.4 for appointment on the post of Principal of the school. It is not in dispute that another member of the Board Shri A.S. Patel was present in the interview. The petitioner after completion of the interview draw a formal resolution for appointment of respondent No.4 on the post of Principal and sent the same along with all the relevant record of the selection committee to the respondent No.3 for grant of its approval to the appointment of the respondent No.4 to be made on the post of principal of the school. The respondent No.3 vide its letter dated 20-2-1989 accorded his approval to the selection of the respondent No.4 and accordingly the appointment of the respondent No.4 on the post of principal stood approved. Under the letter dated 22-5-1989, the respondent No.3 informed to the petitioner that in the interview which has been held on 10-2-1989 for making appointment on the post of principal of the school, the authorised representative of the Board was not present and as a result of which the constitution of the selection committee was not in consonance with the provisions of the Act. Further it is informed that if the petitioner trust continues the respondent No.4 as principal of the school then the trust will not be entitled for grant. The trust was further called upon to show cause as to why deduction to the extent of 5% in grant in aid it receives should not be made. Being aggrieved and dissatisfied with this notice of the respondent No.3, this petition is filed.

4. This petition was placed on Board for preliminary hearing on 2-6-1989 on which date, notices were issued to the respondents No.1, 2 and 3 and interim relief in terms of para - 17(E) has also been granted. Then the matter was admitted on 26-4-1991 and interim relief granted earlier was made absolute.

5. Total contribution of the respondents No.1, 2 and 3 in the matter is even they have not cared to file reply to the special civil application. It is really shocking that the State of Gujarat despite of spending huge amount of public money in defending the cases in the courts

which are being filed against it or which are to be filed by it, the contribution of it is only a formal contribution and not real and effective. This non-cooperative attitude of the State of Gujarat, which is the biggest litigant in the State, results in manifold consequences. One of the reasons of delay in disposal of the cases is this inaction, omission, negligence or carelessness on the part of the officers of the State of Gujarat not to file reply to the petition. Looking to the fact that a very short question does arise in the matter, this court felt it necessary to dispose of the matter at the admission stage, which is clearly borne out from the fact that on 2-6-1989 notice was given to the respondents. In case this notice would have been replied by the respondents then possibility of finally disposing the matter on 26-4-1991 cannot be excluded. Another serious consequence is that despite of spending huge amount of people's money, the respondents are not putting their defence by filing reply and possibility of giving a wrong decision by the court cannot be overruled. Whatever averments made in this special civil application for want of contravention thereof, by the respondent-State of Gujarat and its officers are to be taken to be correct. It is not unknown that the litigants conceal material facts from the courts as well as they many a times suppress relevant and material facts also. Candidly all material and relevant facts are not being disclosed in the special civil application in many of the cases and as the State of Gujarat and its officers are not caring to file reply to the same, those are to be taken to be correct and which results in this court deciding the matter where material facts have been suppressed or concealed by the petitioner. Third consequence which is equally very important is that the court may infer that these officers of the impersonal State did all these deliberately and with oblique motives so as to make easy for the petitioners to get the reliefs in his/her/their favour from the courts. This court cannot be oblivious of the fact that where the officers are interested in the matter for the reasons best known to them, even at the threshold i.e. when the matter is presented by the petitioners, they come up with the caveat. But it happens only in few cases. Percentage of this approach by the State Government in the litigations is negligible. In substantial number of cases, the State of Gujarat and these officers are not filing reply. Fourth consequence is that the State of Gujarat has to pay the fees to the Government advocates for appearing in the matter but in the absence of reply to the special civil applications, their presence does not provide any effective and real assistance to the court. Their

appearance is only a paper appearance for other paper work i.e. to prepare the bill and send the same to the State Govt. for which the advocates are not 100% responsible. What they can do in case the officers of the State of Gujarat are not caring to file reply to the special civil applications. The Govt. advocate has to present the case to the best of his ability on the basis of whatever material produced and made available in the court by the petitioner. Be that as it may. This court cannot indefinitely wait for replies to be filed by the respondents and it cannot defer the hearing of the matters only to make it convenient for the State of Gujarat to file reply to the special civil application. This petition has been filed in the year 1989 and in between the date on which the notice has been issued and the date on which this petition is admitted, the respondents had more than one year and six months at their disposal but they have not cared to file reply to the same. After matter is admitted, if we go by the rojkam of the matter, it is clear that the matter was placed on Board on 24-3-2000 i.e. after more than about nine years of the admission. During this long period also, the State of Gujarat and its officers have not cared to file reply to the special civil application. On 24-3-2000, the matter has been adjourned to 7-4-2000 but still the respondent - State of Gujarat and its officers have not cared to file reply to the special civil application. This is the date where they came to know about the fact that the matter is now placed on the final hearing board. On 7-4-2000, this matter could not be heard and decided and it comes on board today. The respondent- State of Gujarat and its officers had more than 20 days in between but still they have not bothered to file reply to the special civil application, meaning thereby, they left the matter uncontested. In absence of reply to the special civil application, the averments made by the petitioner therein are to be taken to be uncontroverted.

6. Learned counsel for the State of Gujarat and the Board contended that Dhirubhai Patel who has been called as Board's nominee on the selection committee by the petitioner was not on the approved list of the Board. It is an admitted case of the respondents that Dhirubhai Patel was on earlier approved list of the nominee of the Board. On being asked by the court, learned counsel for the respondent is unable to state that the approved list which has been modified has been circulated amongst the management of the schools or not. It is also not the case of the respondents that the modified approved list prepared by the Board of the members to be nominated on

the selection committee has been sent to the petitioner and the petitioner knew it well. It is not in dispute that Dhirubhai Patel at one point of time was on the approved list of the Board of the persons to be nominated as members of the selection committee to make appointment on the post of Principal/Head Master of the schools. In the absence of these material facts from the side of the respondent - State of Gujarat and its officers, it is difficult to blame the petitioner for calling Dhirubhai Patel as the member of the selection committee as representative of the Board. The petitioner called Dhirubhai Patel and it is also not disputed by the respondents that Dhirubhai Patel accepted to remain present as representative of the Board in the selection committee. It is different matter that Dhirubhai Patel had not come on the date of the interview and for which the petitioner cannot be blamed. The matter does not end here. The proceedings of the selection committee were sent to the respondent No.3 for its approval. It is not in dispute that the respondent No.3 under its order dated 20-2-1989 accorded its approval to the selection of the respondent No.4 and resolution of the petitioner trust appointing him as a Principal/Headmaster. The respondent No.3 has not furnished any reason good, bad or indifferent to now take a somersault and has given this notice to the petitioner dated 22-5-1989. I find sufficient merits in the alternative submission made by the learned counsel for the petitioner that even if it is taken that Dhirubhai Patel was not authorised representative of the Board still in the facts of this case, the selection of the respondent No.4 on the post of Principal/Headmaster could not have been questioned by the respondent No.3. The respondent No.3 admitted as a fact that Shri A.S. Patel, Education Inspector was there as member of the selection committee in this case in the capacity as representative of the Gujarat Secondary Education Board. So it cannot be said that no representative of the Gujarat Secondary Education Board was present as a member of the selection committee. The respondent No.3 knowing all these facts has not doubted or raised any objection in the constitution of the selection committee and the consequential selection made of the respondent No.4 on the post of Principal/Headmaster of the school. Once the respondent No.3 has approved this selection then only on very cogent, strong and justified reasons, it could have proceeded in the matter but not in a manner what it did in the present case. Only where there are malafides or oblique motives or some other interest of the management including other representative of the Board then only the blame could have been made. But it is not the case here.

For the reasons best known to it, the respondent No.3 has thought of to take this action. Reference to the circular of the Director of Education dated 19th November, 1981 is also to be briefly made. This provides that in selection committee, where the representative of the District Education Officer is present and if he has not raised any objection at the time of interview of the candidates for appointment on the post of headmaster re: constitution of the selection committee, it is not necessary for the management to send the proceedings of the selection committee and the resolution of the trust for approval of the District Education Officer. In this case, indisputably Shri A.S. Patel, was representative of the District Education Officer as a second member of the Board. He was officer of the Department and he has not raised any objection re. constitution of the selection committee. If we go by the true spirit of the circular and its object and purpose then it was not necessary or incumbent upon the petitioner to send the proceedings of the selection committee for approval of the District Education Officer.

7. There is yet another aspect which needs to be referred and considered. Leaving apart the question whether the respondent No.3 had any power of review of its own order in the matter of appointment of teachers in the grant aided private educational institutions, the reason given for review of its earlier order is wholly perverse and arbitrary in the facts of this case.

8. In the result, this special civil application succeeds and the same is allowed and the order dated 22nd May, 1989 of the District Education Officer, Vadodara disapproving the appointment of the respondent No.4 as Principal/Headmaster of the school of the petitioner trust is quashed and set aside. Further order of withholding of the salary, grant of respondent No.4 is also quashed and set aside. The action of the respondent No.3 proposing to deduct 5% in grant is declared to be illegal and arbitrary. Rule is made absolute. The respondent State of Gujarat is directed to pay Rs.2000/= as costs of this special civil application to the petitioner. The Secretary of the Department concerned is free to recover this amount of costs from the officer, who was holding the post of District Education Officer, Vadodara at the relevant time, if he is in service as on date. Compliance of the order be reported to the court.

zgs/-